

## APPENDIX J

## **Appendix J-1**

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

This Appendix contains a description of the proposed Supplemental Environmental Project ("SEP") to be funded by the Lexington-Fayette Urban County Government ("LFUCG") as part of the Consent Decree resolving alleged violations of the Federal Water Pollution Control Act, also known as the Clean Water Act. LFUCG will dedicate a minimum of \$1,000,000 to this SEP.

Through this SEP, LFUCG will provide stream bank stabilization, habitat restoration and greenway creation in Coldstream Park, located within the Cane Run watershed in Fayette County, and is known as the "Coldstream Park Stream Corridor Restoration and Preservation SEP."

#### **SEP PURPOSE**

The SEP would provide funds for stream and habitat restoration work and greenway creation along an approximate 0.8 mile stretch of Cane Run, located in Coldstream Park between Citation Boulevard and Interstate 75. Coldstream Park consists of floodplain property owned by LFUCG that previously constituted a component of the University of Kentucky's agricultural research farm. LFUCG owns approximately 56 acres of land along the 4,415 linear foot stretch of Cane Run proposed for this SEP. The existing stream varies in distance from the property lines, from a minimum distance of approximately 50 feet to a maximum distance of over 400 feet. The average distance from the centerline of the stream to the property line is approximately 300 feet. Currently, the area adjacent to the proposed greenway is undeveloped, and portions are still utilized for agricultural purposes. Surrounding land uses consist of urban development (commercial and residential) and agricultural. See attached map, Exhibit 1.

The stream banks of Cane Run are severely denuded due to past free grazing of cattle during the park's past history as a University of Kentucky agricultural research facility. Due to erosion in some locations, the incised stream channel is disconnected from the floodplain. Funds for this project will be used to stabilize the channel, restore habitat, reduce peak flows / pollutant loading associated with urban runoff and agricultural activities, and create a permanent greenway. Runoff entering the stream ultimately recharges the Royal Springs Aquifer, which is the raw water supply for the City of Georgetown municipal water system.

The SEP will serve multiple purposes:

- Reduce flooding by removing artificial restrictions within the floodway, thus reducing potential for property damage and stream channel erosion;
- Reduce pollutant loadings entering Cane Run, which recharges the Royal Springs Aquifer, through use of green infrastructure concepts for minimizing erosion and maximizing infiltration;
- Enhance recreational and educational opportunities within the Urban Service Area by enhancing passive use land within the park system and habitat restoration;

- Assist LFUCG and other watershed stakeholders in promoting / implementing future water quality initiatives within the basin including through the creation of a greenway to permanently buffer and protect the stream. LFUCG strongly believes that increased emphasis on quality of life perceptions is critical to the success of holistic, long-range watershed planning.

The SEP will benefit the public and the environment by improving floodplain conditions that contribute to flood water backup and stream channel erosion and that generally impact floodplain ecosystems. The SEP will also benefit residents served by the neighboring City of Georgetown public water system by reducing pollutant loads discharging into Cane Run, which recharges the Royal Springs Aquifer, which is the raw water source for that city. This area was identified as a beneficial greenway area in the conceptual 2002 Greenway Master Plan, which identifies potential generalized locations for conservation greenways. This proposed greenway has not been funded and there are no funds dedicated to its implementation.

### **SEP SCOPE**

The scope of this SEP is to create and implement a new Coldstream Park Greenway Plan for the property owned by LFUCG along Cane Run in Coldstream Park. The approximate limits of the work and greenway SEP are as shown on the attached map in Exhibit 1.

This project will provide for reconnecting the stream channel to the floodplain, reestablishing a stable channel pattern and geometry, stabilizing of the channel banks with vegetation, restoring natural riparian habitat along the banks, and restoring habitat in bordering areas.

Project components and requirements include the following:

- Natural stream design parameters appropriate to the Inner Bluegrass – e.g. “E” Channel sinuosity, pool-riffle-run-glide ratios, bankfull heights, etc. The elevation of the baseflow will be adjusted for maximum habitat improvements and floodplain hydrology restoration.
- Backwater areas and vernal pools to enhance amphibian habitat.
- Infiltration basins built in the floodplain to provide additional terrestrial habitat and to enhance pollutant uptake, groundwater recharge, and restoration of healthy base flows.
- Habitat restoration in bordering areas throughout the greenway.
- Establishment of a conservation easement, in a format substantially similar to the attached form (Exhibit 2), to permanently protect the use of the greenway as designed, with exceptions for work necessary for maintenance, repair or replacement of existing utilities and certain other activities that are consistent with the greenway purpose.
- At a minimum, the design consultant selected for this SEP should be thoroughly familiar with Stream Mitigation Guidelines published by EPA and/or EPPC, fluvial process and channel evolution and natural channel design or alternative stream design methodologies.
- Final designs will be submitted to EPA for review and approval to ensure that the designs are consistent with EPA’s Stream Mitigation Guidelines and conservation easement principles.

### **SEP Costs**

LFUCG shall spend at least \$1,000,000 for the implementation of this SEP. Programmatic and administrative costs incurred by LFUCG will not be counted against the dollar amount devoted to this project.

### **SEP Schedule**

The duration of this SEP will be five (5) years from the date of entry of the Consent Decree.

Project tasks and associated deadlines include:

- Development of the Coldstream Park Greenway Plan through a selected design firm for submittal to EPA within 24 months of Effective Date;
- Procure necessary state and federal permits for the project;
- Construct and implement Greenway Plan within 60 months of Effective Date.

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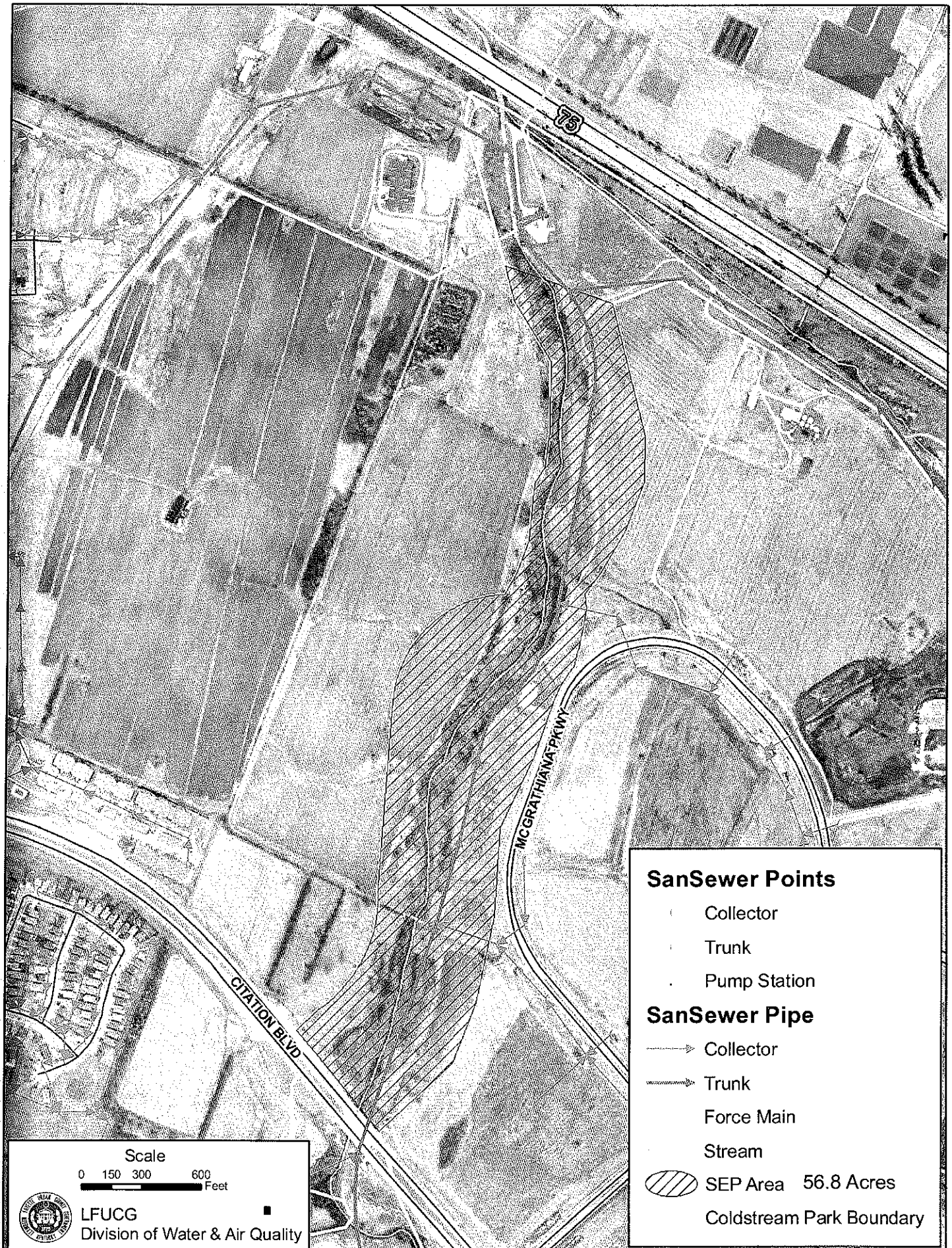


EXHIBIT 1

## DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, having a principal office address of 200 East Main Street, Lexington, Kentucky 40507 ("Grantor"), in favor of LEXINGTON FAYETTE URBAN COUNTY GREENSPACE TRUST, INC., a Kentucky corporation, having a principal address at 200 East Main Street, 6<sup>th</sup> Floor, Lexington, Kentucky 40507 ("Grantee").

### WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Fayette County, Kentucky, more particularly described in the aerial photo attached as Exhibit A hereto, and shown on the survey attached as Exhibit B hereto, both of which are incorporated herein by this reference (the "Property");

WHEREAS, the Property possesses conservation values of importance to Grantor, the people of Fayette County and Scott County, and the people of the Commonwealth of Kentucky, which, if preserved, will yield significant public benefits, including the restoration and preservation of a section of Cane Run stream (collectively, "Conservation Values");

WHEREAS, Grantee is authorized to accept conservation easements as required to retain and protect natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest or open-space use, protecting natural resources, and to preserve the historical, architectural, archaeological, or cultural aspects of real property in Kentucky and is qualified to accept such easements under Section 170(h) of the Internal Revenue Code;

WHEREAS, the grant of a conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and the Conservation Values and significance of the Property;

WHEREAS, the grant of a conservation easement on the Property by Grantor to Grantee shall assure, in particular, conservation of the Property consistent with the Coldstream Park Stream Corridor Restoration and Preservation Supplemental Environmental Project criteria set forth in Appendix J to the Consent Decree in Civil Action No. 5:06-cv-386 in the United States District Court for the Eastern District of Kentucky (hereinafter the "Consent Decree");

WHEREAS, the preservation of the Conservation Values of the Property will assist in the accomplishment of the conceptual Greenway Master Plan, adopted and approved by Lexington Fayette Urban County Planning Commission in June 2002, all of which are of great importance to Grantor, Grantee, the people of Fayette County, Kentucky and the people of the Commonwealth of Kentucky in that it will, among other things:

- (a) Minimize the impact of changing land use on natural features and ecosystems;
- (b) Protect a section of Cane Run and its adjacent floodway, which recharges Royal Spring Aquifer;
- (c) Restore and preserve the riparian corridor of Cane Run within the Greenway Project area, and reestablish habitat in bordering areas;
- (d) Preserve and enhance significant habitat for wildlife species;

WHEREAS, Grantor intends the Conservation Values of the Property to be preserved and maintained by this Easement, in perpetuity, and that the continuation of land use patterns, existing at the time of this Easement shall not be permitted to impair or interfere with those values;

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a conservation easement on the Property, pursuant to the terms herein;

WHEREAS, Grantee agrees by accepting this Easement, that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Conservation Values of the Property;

WHEREAS, Grantor further intends as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property, together with all unreserved development rights associated with the Property, of the nature and character and to the extent hereinafter set forth ("Easement").

**1. Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever as a greenway consistent with the requirements of the Coldstream Park Stream Corridor Restoration and Preservation Supplemental Environmental Project ("Project") in Appendix J to the Consent Decree, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with the purpose of this Easement.

**2. Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- (a) To preserve and protect the Conservation Values of Property;

(b) To enter upon the Property at reasonable times, at least once per year, in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. For example, to the extent that hiking and biking trails or parking or other recreational areas are added to the greenway, the Grantee shall ensure that appropriate construction techniques and controls are utilized to protect the conservation goals of the Project consistent with the conditions on Express Reservations, below.

(d) To ensure that any activities undertaken to replace, repair, or maintain utilities located within the Property are conducted in a manner to minimize temporary impacts to the Property and are reclaimed to restore the Greenway.

(e) To prevent the following prohibited activities on or uses of the Property, each of which is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by such activities or uses:

1. Construction or installation of structures or buildings except for small sheds or portable restroom facilities, with the approval of the Grantee;
2. Industrial, commercial or residential use;
3. Use by motorized vehicles, except as needed for maintenance of the Greenway or sanitary sewer infrastructure, and within the parking area described in Section 3(e);
4. Installation of utility structures except to perform necessary maintenance, repairs, replacements or upgrades of existing utilities infrastructure;
5. Dumping or other disposal of refuse, trash, or hazardous materials, except within receptacles installed for disposal of small amounts of trash by recreational users;



6. Agricultural use or grazing;
7. Use of agricultural chemicals such as pesticides or herbicides except for limited uses in response to public health threats or invasive species that cannot otherwise be practically controlled, with approval of the Grantee;
8. Display of billboards, signs or advertisements, except for signs informing users of the conservation and recreational values of the Project and of prohibited uses of the Project;
9. Mining, drilling, removing or exploring for or extracting materials on or below the surface of the Property; and
10. Any other uses or activities inconsistent with the purpose of this Easement.

**3. Reserved Rights.** Grantor reserves all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Express Reservations includes the following:

- (a) Rights to maintain, upgrade, replace, or repair all utilities existing on the property, contingent upon development and implementation of a plan, reviewed and approved by the Grantee, to minimize disturbance and to restore the greenway to its approximate pre-disturbance condition;
- (b) Rights to construct a shared use trail within the greenway, contingent upon:
  - i. creation of a minimum buffer distance from the trail to the stream of thirty (30) feet and an average distance of at least fifty (50) feet;
  - ii. use of pervious materials for construction;
  - iii. alignment of the trail to follow existing utility lines to the extent practicable; and
  - iv. development of a design plan to be reviewed and approved by the Grantee;
- (c) Rights to use legal non-chemical methods to control predatory and problem animals as permitted by state and federal law; and

(d) Rights to construct a single parking area of a size no larger than necessary to accommodate anticipated visitors to the greenway, contingent upon:

- i. use of pervious materials for construction; and
- ii. installation of appropriate runoff controls; and
- iii. development of a design plan to be reviewed and approved by the Grantee; and
- iv. creation of a minimum buffer distance from the parking area to the stream of one hundred (100) feet; and

(e) Rights to maintain the greenway vegetation and habitat.

**4. Existing Encumbrances.** Anything to the contrary herein notwithstanding, the Property is subject to all existing encumbrances of record prior to the date this Easement is recorded and Grantor represents that is in compliance with the terms and conditions of all of the same.

**5. Notice and Approval.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than 2 business days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

**6. Grantee's Remedies.**

**6.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

**6.2 Injunctive Relief.** If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing such violation within the said period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring

an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

**6.3 Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

**6.4 Emergency Enforcement.** If Grantee, in good faith, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire.

**6.5 Scope of Relief.** Grantee's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement. Grantee's remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**6.6 Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

**6.7 Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**6.8 Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

**6.9 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against

Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**7. Costs, Liabilities, Taxes, and Environmental Compliance.**

**7.1 Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

**7.2 Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(a) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(b) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders;

(d) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state and local laws, regulations and requirements.

**7.3 Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined,

listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required..

**7.4 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and KRS 224.01-010 *et seq.*

**7.5 Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS 224.01-010 *et seq.*, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and, (3) the obligations, covenants, representation, and warranties of Sections 7.1 through 7.3. In no event shall Grantor's indemnification act as a waiver or defense to any immunity or damage limitation Grantor may otherwise have available to third parties.

## **8. Extinguishment and Condemnation.**

**8.1 Extinguishment.** Grantor and Grantee hereby recognize that an unexpected change in the conditions of the Property may make impossible the continued ownership or use of the Property for conservation purposes and necessitate a partial or full extinguishment of this Easement. Any such extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding in a court of competent jurisdiction, and it shall be the burden of any party seeking extinguishment to demonstrate that the continued use of the Property for conservation purposes has been made impossible by an unexpected change in conditions.

(b) Grantee shall be entitled to share in the net proceeds resulting from the extinguishment in an amount equal to the percentage interest of the fair market value of Grantee's interest in the Property created pursuant to this Easement.

**8.2 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantor and Grantee shall share the balance of the amount recovered as their interests appear.

**8.3 Application of Proceeds.** Grantee and Grantor agree to apply the entire portion of the net proceeds they receive from or following the extinguishment of the Easement or Condemnation to the conservation of other real property having cultural, natural, scenic, agricultural or open-space value and significance to the people of Fayette County, Kentucky.

**8.4 Net Proceeds.** Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Property after the extinguishment, but shall specifically exclude the outstanding balance of any superior mortgage.

**9. Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement in writing, with prior approval of the parties to the Consent Decree; provided that no amendment shall be allowed that will affect the qualification of this Easement and any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Clerk of Fayette County, Kentucky.

**10. Assignment.** This Easement is transferable, but Grantee may assign all or any portion of its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under applicable laws of the Commonwealth of

Kentucky or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor, and to the parties to the Consent Decree, of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

**11. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee, and to the parties to the Consent Decree, of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**12. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Mayor, Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507

To Grantee:

President  
Lexington-Fayette Urban County Government Greenspace Trust, Inc.  
200 East Main Street, 6<sup>th</sup> Floor  
Lexington, KY 40507

or to such other address as either party from time to time shall designate by written notice to the other. Mailed notices shall not be deemed given or served until three business days after the date of mailing thereof or if delivery is by nationwide commercial courier, service of notice shall be deemed given one business day after the date of delivery thereof to said courier. Rejection or refusal to accept, or inability to deliver because of changed addresses or because no notice of changed address was given, shall be deemed a receipt of such notice.

**13. Recordation.** Grantee shall record this instrument in timely fashion in the Office of the Clerk of Fayette County, Kentucky, and may re-record it at any time as may be required to preserve its rights in this Easement.

**14. Existing Liens.** Grantor warrants that to the best of its knowledge and belief there are no liens or mortgages on the Property. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee, provided however, Grantor may contest in good faith the assertion of any tax lien, mechanics' lien or other lien on the Property through any administrative or judicial remedies available to Grantor, but Grantor shall promptly satisfy any such lien finally adjudged to be valid.

**15. Leases.** Grantor warrants that there are currently no lease agreements (whether written, oral, for a fixed term or month-to-month) in effect conveying any interest in the Property for use or occupation by any person.

**16. Grantee's Interest.** Grantor acknowledges that upon execution and recording of this Easement, Grantee shall be immediately vested with a real property interest in the Property.

**17. General Provisions.**

**17.1 Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Kentucky.

**17.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of this Easement.

**17.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**17.4 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 9.

**17.5 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.



**17.6 Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

**17.7 Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**17.8 Approval.** Whenever in this Easement Grantee's approval or consent is required, said approval or consent shall not be unreasonably withheld, delayed or denied.

**17.9 Enforceability.** The invalidity of any applicable statute or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their respective successors, heirs and assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This Easement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this Easement or any part thereof. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof.

**17.10 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument, and shall have no effect upon construction or interpretation.

**17.11 Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the record counterpart shall be controlling.

**TO HAVE AND TO HOLD** unto Grantee, its successors, and assigns forever.

**IN WITNESS WHEREOF** Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR:  
LEXINGTON-FAYETTE URBAN

Jim Newberry, Mayor

BY:

COMMONWEALTH OF KENTUCKY           )  
   ) SS.  
COUNTY OF                                 )

My commission expires: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

My commission expires: \_\_\_\_\_

This instrument prepared by:

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Government  
Department of Law  
200 East Main Street, 11<sup>th</sup> Floor  
PO Box 34028  
Lexington, Kentucky 40588-4028

## **SCHEDULE OF EXHIBITS**

- A. Aerial photograph
- B. Survey

## **Appendix J-2**

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

This Appendix contains a description of the proposed Supplemental Environmental Project ("SEP") to be funded by the Lexington-Fayette Urban County Government ("LFUCG") as part of the Consent Decree resolving alleged violations of the Federal Water Pollution Control Act, also known as the Clean Water Act. LFUCG will dedicate a minimum of \$230,000 to this SEP.

Through this SEP, LFUCG will implement of one or more green infrastructure projects for management of wet weather flows in urban areas of Fayette County.

#### **SEP PURPOSE**

The SEP will involve LFUCG implementation of one or more green infrastructure projects for management of wet weather flows in urban areas of Fayette County. For purposes of this SEP, green infrastructure is defined as an approach to managing stormwater that utilizes natural or engineered systems that mimic natural landscapes to capture, cleanse and reduce stormwater runoff through plant, soil and microbial processes. This SEP will provide for implementation of local (site specific) scale green infrastructure projects to be identified after entry of the Consent Decree. Local scale green infrastructure projects may include systems of natural or vegetated practices like swales, bioretention, green roofs, or rain gardens, or use of pervious paving materials. The projects may include new infrastructure or replacement of existing infrastructure.

The SEP will serve multiple purposes:

- Reduce stormwater flow volumes by promoting evapotranspiration, soil storage, or infiltration of stormwater runoff;
- Provide and promote green infrastructure concepts for use by the public by demonstrating the environmental and cost effective benefits of green infrastructure;
- Enhance groundwater recharge.

#### **SEP SCOPE**

LFUCG will implement local (site specific) scale green infrastructure projects within urbanized areas of Fayette County. Selected projects may be for either new areas of residential or commercial development or in existing urbanized areas. To qualify under this SEP, green infrastructure projects must promote the capture, infiltration, and/or evapotranspiration of stormwater or provide for the recycling and reuse of stormwater through a system of natural or vegetated practices which may include swales, bioretention, green roofs, rain gardens, or pervious paving materials. Selected projects will be submitted to EPA for review and comment.

#### **SEP Costs**

LFUCG shall spend at least \$230,000 for the implementation of this SEP. Programmatic and administrative costs incurred by LFUCG will not be counted against the \$230,000 devoted to this project.

### **SEP Schedule**

The duration of this SEP will be five (5) years from the date of entry of the Consent Decree.

Project tasks and associated deadlines include:

- Identification of green infrastructure (local scale) projects for implementation in urbanized areas of Fayette County;
- Submittal of proposed green infrastructure projects to EPA for review and approval to ensure that projects are consistent with green infrastructure concepts delineated in EPA guidance;
- Design and implementation of selected green infrastructure projects;
- Use of completed projects as examples for promoting the benefits of green infrastructure to the public.

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